

# Kohler Settlement Negotiations

U.S. DOJ, EPA, Cal. DOJ, CARB, and Kohler

February 22, 2019

# Overview

- ▶ Summary of violations
- ▶ Credit forfeiture
- ▶ Updated economic benefit calculations
- ▶ Gravity
- ▶ Settlement framework

# Summary of Violations

1. CAA Section 203(a)(1): Introducing Engines Not Covered by Certificate of Conformity: (b) (4)
2. CAA Section 203(a)(1): Introducing Engines Not Covered by Certificate of Conformity - Defeat Device Engines: (b) (4)
3. CAA Section 203(a)(3)(b): Manufacture and Sale of Defeat Devices: (b) (4)
4. CAA Section 203(a)(2): Failure to Submit Complete or Accurate Reports: (b) (4)
5. CAHSC 43016 and 43154: Introducing Engines Not Covered by EO: (b) (4)
6. CAHSC 43016 and 43154: Introducing Engines Not Covered by EO - California Defeat Device Engines: (b) (4)
7. CAHSC 43016 and 43154: Manufacture and Sale of Defeat Devices on California Subject Engines: (b) (4)
8. CAHSC 43016 and 43154: Failure to Submit Complete or Accurate Reports: (b) (4)
9. CAHSC 43016 and 43154: Introducing MY16 Engines into California Engines Not Covered By EO - Evaporative Emissions: (b) (4)

# Credit Forfeiture

- ▶ Outstanding issues

- ▶ 5972GW
- ▶ 1491GB
- ▶ MY16 Engines

- ▶ (b) (4)

- [REDACTED]
- [REDACTED]
- [REDACTED]

# Credit Forfeiture

- ▶ (b) (4) [REDACTED]
- [REDACTED]
- [REDACTED]

(b) (4)

- [REDACTED]
  - [REDACTED]
  - [REDACTED]
    - [REDACTED]
- [REDACTED]
  - [REDACTED]
  - [REDACTED]
    - [REDACTED]

# Revised Economic Benefit

- ▶ Certification violations

- ▶ Avoided (b) (7)(E) tests

- ▶ (b) (7)(E)

- ▶ (b) (4)

- 

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- 

- ▶ Defeat device engine profits

# Economic Benefit

► Unlawful profits

- (b) (7)(E) [redacted]
- (b) (4) [redacted]
  - [redacted]
    - [redacted]
  - [redacted]
    - [redacted]

Engine Family	# of Engines
(b) (7)(E)	(b) (4)
(b) (7)(E)	
(b) (7)(E)	
(b) (7)(E)	
(b) (7)(E)	
(b) (7)(E)	
(b) (7)(E)	
(b) (7)(E)	
(b) (7)(E)	
Total:	

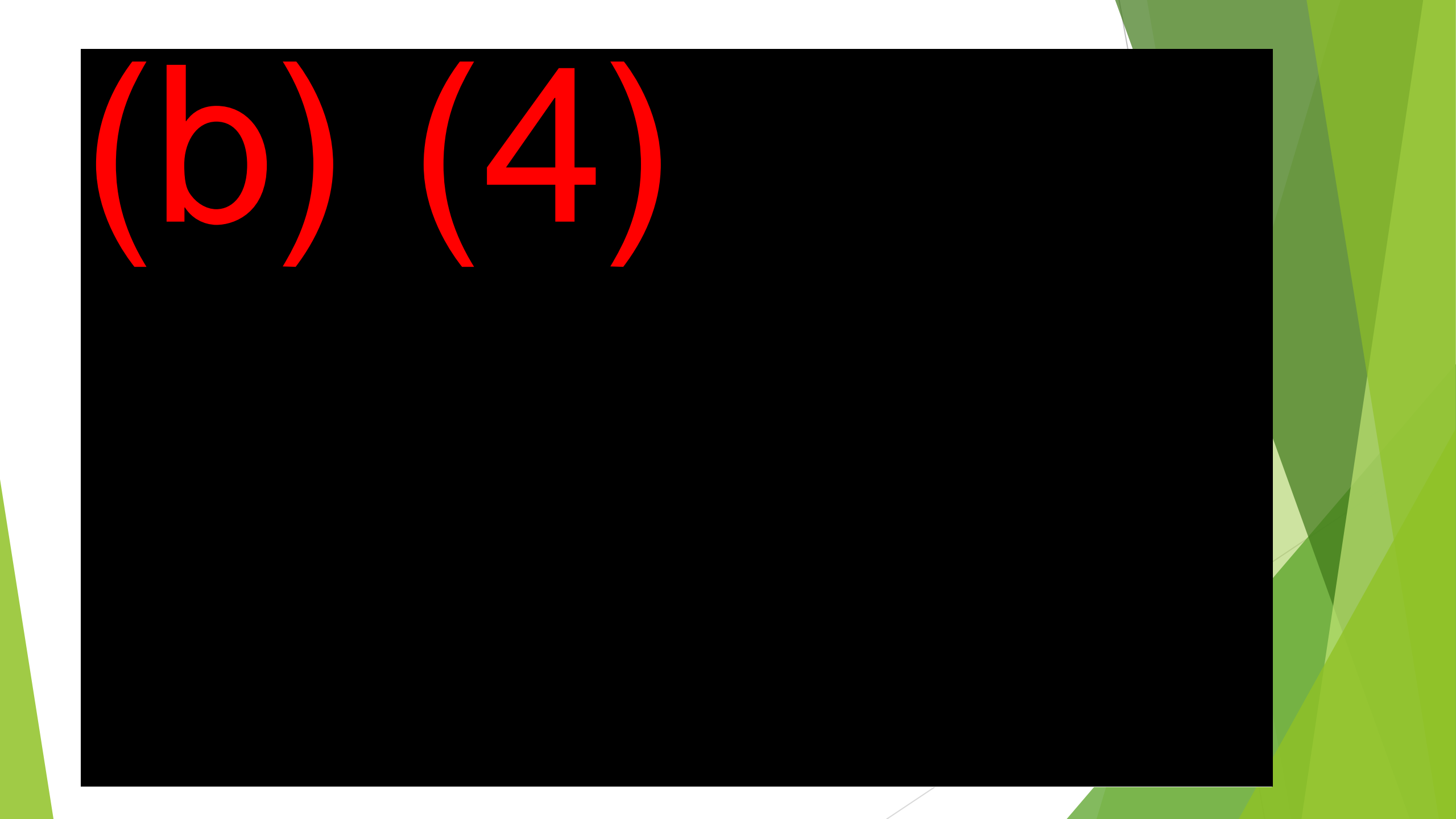
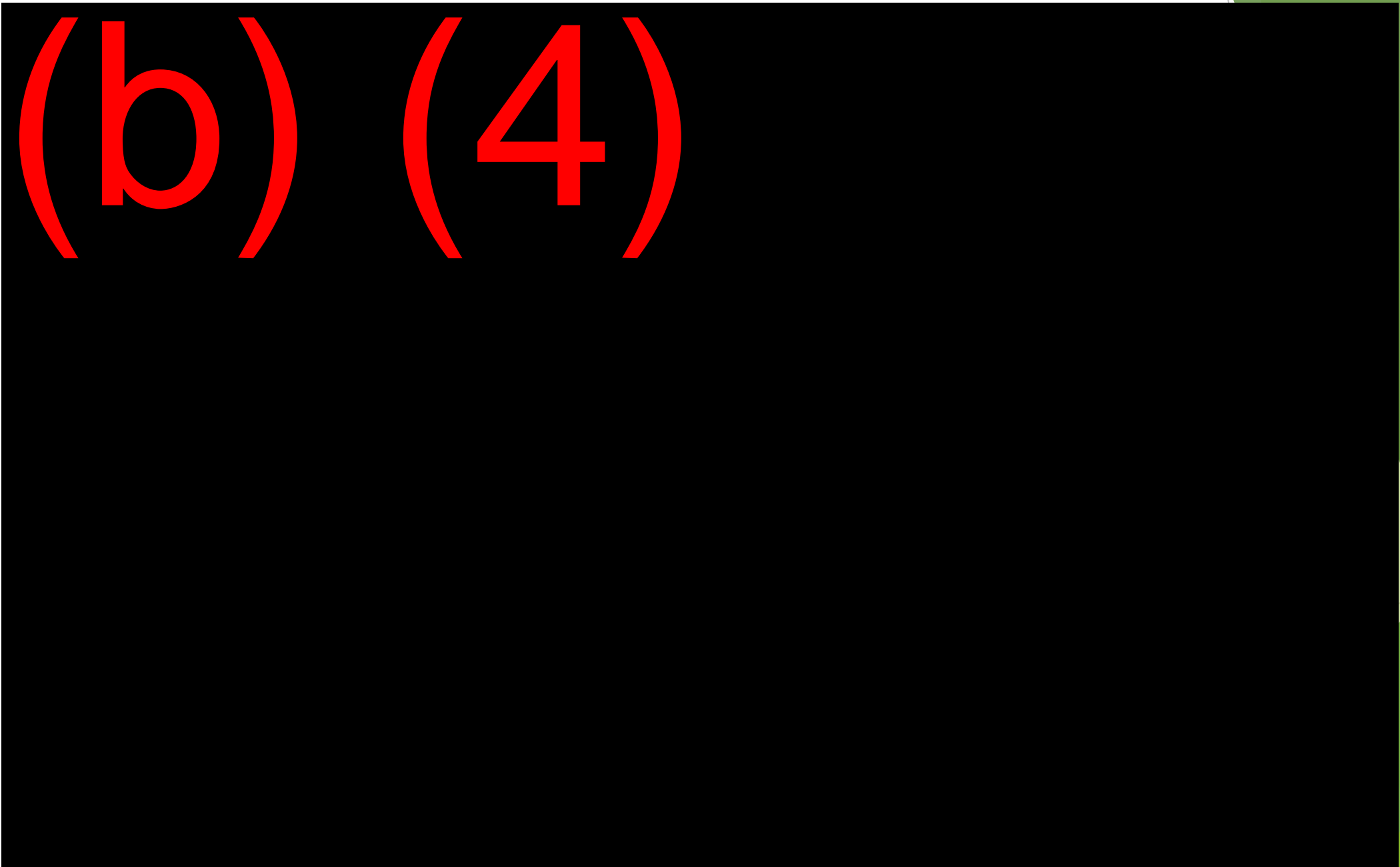
Element of Economic Benefit	Nominal Benefit (pre-tax)	Nominal Benefit (after tax)	(b) (7)(E)
Avoided Tests:			
(b) (7)(E)			(b) (4)
(b) (7)(E)			
(b) (7)(E)			
Subtotal avoided tests			
(b) (7)(E)			
Profits:			
(b) (7)(E)			
(b) (7)(E)			
Subtotal engines			
(b) (7)(E)			
(b) (7)(E)			
Subtotal parts			
Total			

# Gravity

(b) (4)

(b) (4)

(b) (4)



(b) (4)

(b) (4)

(b) (4)

Per 40 CFR Part 1068.110 (d): *Defeat devices*. We may test engines and equipment to investigate potential defeat devices. We may also require the manufacturer to do this testing. If we choose to investigate one of your designs, we may require you to show us that it does not have a defeat device. To do this, you may have to share with us information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies. It is a violation of the Clean Air Act for anyone to make, install or use defeat devices. See §1068.101(b)(2) and the standard-setting part.

The referenced 40 CFR Part 1068.101(b)(2): *Defeat devices*. You may not knowingly manufacture, sell, offer to sell, or install, any part that bypasses, impairs, defeats, or disables the control of emissions of any regulated pollutant, except as explicitly allowed by the standard-setting part. We may assess a civil penalty up to \$3,750 for each part in violation.

(b) (4)

# Gravity

- ▶ Statutory factors
- ▶ Case Law
- ▶ Penalty Policies
- ▶ Self-Disclosure

# Settlement Framework

- ▶ Credit forfeiture

- ▶ (b) (4)



- ▶ Civil penalty

- ▶ Injunctive Relief will likely include:

- ▶ Compliance auditing
  - ▶ Independent certification personnel
  - ▶ Training